



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 070062

Petitioners, Oliver Buckley and Lynne Layton, applied to the Building Department for a permit to construct two new retaining walls to create parking within the front yard setback requiring relief for front and side yard setbacks at 253 Mason Terrace. The applicants are proposing to create two side-by-side parking spaces in the front yard setback and to remove the lower portion of the driveway which steeply slopes downward from the street towards the rear of the property. The first parking space will be located on the existing driveway to the front/side of the house and the second space will be located in the front of the house. The application was denied and an appeal taken to this Board.

On November 1, 2007, the Board of Appeals met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed December 13, 2007 at 7:30 p.m., 2nd floor, Main Library, as the time and place of a hearing on the appeal. On the day of the hearing, a weather related state of emergency was declared and the hearing was postponed to January 10, 2008 at 7:15 p.m., 2nd floor, Main Library. Notice of the postponed hearing was mailed to the Petitioners, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the postponed hearing was published on December 20 and 27, 2007 in the Brookline TAB, a newspaper published in Brookline. Copy of said notice is as follows:

LEGAL NOTICE

TOWN OF BROOKLINE MASSACHUSETTS BOARD OF APPEALS NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **BUCKLEY, OLIVER E AND LAYTON, LYNNE B**
Location of Premises: **253 MASON TER BRKL**
Date of Hearing: **01/10/2008**
Time of Hearing: **07:15 p.m.**
Place of Hearing: **Main Library, 2nd fl.**

A public hearing will be held for a special permit and/or variance from:

**6.03.1.a; Location of Required Off-Street Parking
Facilities; Variance Required
For the Design of All Off-Street Parking Facilities;
6.04.4.c; Variance Required
6.04.5.c.1; Variance Required
6.05.c.2; Variance Required
6.04.e; Special Permit Required
6.04.12; Special Permit Required
8.02.2; Alteration or Extension; Special Permit**

Of the Zoning By-Law to reconstruct a driveway and to extend the parking for two motor vehicles and to also adjust the topography & grades including the construction of retaining walls

at **253 MASON TER BRKL**

Said Premise located in a S-7 district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-730-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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At the time and place specified in the notice a public hearing was held by this Board. Present at the hearing were the Chair, Enid Starr, Kathryn Ham and Jonathan Book. The Chair outlined the order of procedure to be followed related to the presentation and Board discussion of the application.

Petitioners were represented by Attorney Roger R. Lipson of 7 Harvard Street, Brookline.

Mr. Lipson noted that the Planning Board report of November 29, 2007, copies of which the Board had in their possession, recommended approval of the petitioners' proposal by a majority vote of 4 to

1. Mr. Lipson stated that the proposal consisted of a proposed driveway width of 40 feet that was made possible by means of a two-foot easement granted to them by their neighbor at 259 Mason Terrace. This, in effect, would create a common driveway with their neighbor. The proposed new driveway would result in two side-by-side parking spaces in the front yard setback requiring the removal of a portion of the front lawn and the removal of the lower portion of the driveway and parking area at the rear of the house. The first parking space would be located on the existing driveway to the front side of the house and the second space would be located next to it but in front of the house. The proposed plans would also require the construction of retaining walls on either side of the new driveway. Mr. Lipson explained that this proposal was necessitated by the petitioners' extremely steep driveway that sloped downward toward the back yard at an 18° angle making it difficult, if not impossible, as well as being dangerous, to negotiate during the winter months when snow and ice accumulate. He pointed out that the petitioners had to have their automobile wheels turned at an angle to prevent sliding down the driveway. Mr. Lipson distributed a photograph of the petitioner's automobile illustrating the steep angle of the driveway and called the Board's attention to similar photographs in the Planning Board report. Several photographs in the report illustrated side-by-side parking arrangements by neighbors on either side of the petitioners' property as well as other properties on the same side of the street. Mr. Lipson stated that the plan

also called for leveling off the driveway, constructing a set of stairs leading to the rear yard and installing a storm drain to the rear of the parking area to carry off runoff to the rear yard. He pointed out that, at the present time, the rear yard is completely paved with asphalt but that, in return for removing a portion of the front lawn, the petitioners' plan calls for the removal of the asphalt yard and the installation of appropriate landscaping as a replacement. Mr. Lipson cited the Planning Board report which notes that, under Section 6.04.12 of the Zoning By-Laws, the Board of Appeals may waive the dimensional requirements for parking facilities to serve existing buildings. Although the creation of a 40 foot wide front yard parking area and driveway necessitating the construction of a retaining wall on the neighbor's property at 259 Mason Terrace requires a variance, the Board of Appeals may grant a special permit under Section 6.04.5.e authorizing the owners of adjoining properties to establish common driveways under mutual easements. In order to facilitate the proposed reconstruction of the driveway, the petitioners will need to remove a silver maple tree on the side of the driveway which is on the neighbor's property. Mr. Lipson pointed out that the silver maple tree is not allowed into this country anymore because its roots have been known to cause considerable property damage, particularly to the foundations of homes. He also noted that the petitioners' neighbor has agreed to the tree's removal. In other parking cases decided by the Board of Appeals, Mr. Lipson stated that the Board has recognized that there are certain streets in Brookline where the unique topography of the land warrants the granting of relief for parking and that, in this case, the steep, downward sloping driveway which is especially hazardous in the wintertime for the owners, qualifies for such relief. Mr. Lipson said that the petitioners agreed with the Planning Board report and had no objection to the Planning Board's recommended conditions attached to their approval.

The Chair pointed out that Section 6.04.5.e requires that the easement with the owner of 259 Mason Terrace, in order to be effective in establishing a common driveway by special permit, must be recorded in the Registry of Deeds. Mr. Lipson acknowledged that recording requirement and agreed that the easement with the neighbor would be recorded. Board member Kathryn Ham inquired about compliance with the required driveway setback of 5 feet since the petitioners' existing setback was only 1 foot. Frank Hitchcock, Brookline Building Department Senior Inspector, responded that the By-Laws provide for an exemption from the setback where the parking is for 6 or less cars and also that the particular setback requirement only applies to parking lots.

Mr. Lipson concluded his remarks and introduced Peter Wright, of Cambridge, the petitioners' architect, to the Board to answer any questions about the design and/or the proposed construction as described in the submitted plans. Mr. Wright noted the condition of the steep slope and the very narrow width of the driveway. He stated that his objective was to try and reduce the steepness and level the driveway as much as possible without making the rear drop-off too high. He had designed the retaining wall as low as possible in order to allow adequate space for opening the car door. He noted that the retaining walls would be constructed of poured concrete and that no more than 24 inches of concrete would be exposed in any one area. Mr. Wright pointed out that the approximately 1000 square feet of paved asphalt covering the rear yard would be removed in its entirety and replaced with attractive landscaping to compensate for the removal of a portion of the front yard.

The Chair asked if there were any persons who wished to speak in favor of the petitioners' proposal. Bill Lawson, of 256 Mason Terrace, whose property is located directly across the street from the petitioners' property, acknowledged his familiarity with the petitioners' steep driveway difficulties, particularly in the wintertime. He noted that he was fortunate to have a level driveway

on his side of the street and to be able to park two cars side-by-side. He urged the Board to grant approval to the petitioners.

The Chair, then asked if there were any members of the public who wished to speak in opposition to the petitioners' proposal. There were none.

The Chair then asked for a report and recommendation from the Brookline Planning Board. Laura Curtis, Staff Planner, of the Brookline Planning and Community Development Department, addressed the Board of Appeals on behalf of the Brookline Planning Board. Ms. Curtis informed the Board that the Planning Board supports the proposal to establish parking within the front yard setback. She noted that the Planning Board is generally opposed to locating parking spaces in front of the house but that in the case of 253 Mason Terrace, the majority of the Board believed that the steep slope and narrow existing driveway limited other viable parking alternatives on this site such as tandem side yard or rear yard parking. The Planning Board also appreciated that the petitioners were proposing to remove the asphalt driveway and parking area in the rear yard and to install additional landscaping. The Planning Board requested that the petitioners submit a final landscaping plan for the property with details on the proposed landscaping at the rear of the property as well as the front yard in the vicinity of the parking area. Therefore, the Planning Board voted (4-1) to recommend approval of the driveway plans, titled "Buckley Layton Residence – 253 Mason Terrace" by Peter Wright Studio, Architects and dated September 10, 2007, and the site plan, titled "Certified Plot Plan – 253 Mason Terrace" by George C. Collins of Boston Survey, Inc., last dated August 5, 2007, subject to the following conditions:

1. Prior to issuance of a building permit, a final landscaping plan shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land

surveyor; 2) final elevations of the retaining walls, stamped and signed by a registered engineer or architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chair asked Mr. Lipson if the petitioners had any objections to the Planning Board's conditions. Mr. Lipson said that the petitioners had no objections.

The Chair then asked for a report and recommendation from the Brookline Building Department. Frank Hitchcock, Plan Examiner, of the Brookline Building Department, addressed the Board of Appeals. Mr. Hitchcock said that the Building Department was originally skeptical of the proposal because of the plan to have a second parking space in the front yard. However, upon learning of the plan to dig up the paved asphalt in the rear yard and to replace it with landscaping, he felt better about it. He said that there are no variances required here and that this is a case where special permits can provide flexible relief. Mr. Hitchcock stated that under Section 6.04.5.e, the Board of Appeals may by special permit authorize the owners of adjoining properties to establish common driveways under mutual easements provided that any special permit granted must be recorded in order to become effective. As to compliance with setback requirements, under Section 6.04.12, the Board of Appeals may waive dimensional requirements for parking facilities that are proposed for existing buildings. Finally, as to the alteration of a non-conforming structure, Section 8.02.2 permits the Board of Appeals to grant a special permit for the removal of a portion of the existing driveway because the remaining portion of the driveway is non-conforming. Mr. Hitchcock said that the Building Department has no objection to the proposal, no objection to the issuance of special permits and no objection to the conditions spelled out in the Planning Board's recommendations.

The Chair declared the public discussion portion of the meeting as having been concluded.

The members of the Board then discussed the merits of the application.

Jonathan Book inquired about the requirement of a variance for the construction of a retaining wall on the adjacent property at 259 Mason Terrace. Frank Hitchcock replied that the Board may issue a special permit authorizing the owners of adjoining properties to establish a common driveway under a mutual easement that is recorded.

Kathryn Ham said that she had made a visit to the site. She observed the steep, sloping driveway and was sympathetic to the petitioners' proposal to avoid the hazardous driveway conditions especially in the wintertime. She stated that the relief sought is definitely warranted.

The members of the Board, having deliberated on the merits of the application and having considered the foregoing testimony, conclude that it is desirable to grant special permits under Section 6.04.5.e, Section 6.04.12 and 8.02.2 of the Zoning By-Laws. Therefore, the Board makes the following findings pursuant to Section 9.05.1:

- a. The specific site is an appropriate location for such a use, structure or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Therefore, the Board voted unanimously to grant approval for the granting of special permits for the driveway plans, entitled "Buckley Layton Residence – 253 Mason Terrace" by Peter Wright Studio, Architects and dated September 10, 2007, and the site plan, entitled "Certified Plot Plan – Mason Terrace" by George C. Collins of Boston Survey, Inc., last dated August 5, 2007, subject to the following conditions:

1. Prior to issuance of a building permit, a final landscaping plan shall be submitted to the Assistant Director for Regularly Planning for review and approval.
2. Prior to issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final elevations of the retaining walls, stamped and signed by a registered engineer or architect; 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds; and 4) evidence that the mutual easement for the common driveway has been recorded in the Registry of Deeds.

RECEIVED
CLERK OF BROOMFIELD
REGISTRARS OF VOTERS
OCT 10 - 1 PM 3:59

Unanimous Decision of
the Board of Appeals

Date of Filing: _____


Enid Starr, Chair

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals